

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

FILED
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STATE OF TENNESSEE, *ex rel.* ROBERT
E. COOPER, JR., ATTORNEY GENERAL
and REPORTER,

Plaintiff,

v.

CONSUMER DEPOT, LLC, MARTIN FIKE,
CAROL FIKE, MICHAEL HINDS, and
AUCTION LOGISTIX, LLC,

Defendants.

No. 06C1093

T2 DESIGNATION

AGREED INJUNCTION

COMES NOW plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, on behalf of Mary Clement, Director of the Division of Consumer Affairs ("State") and Defendants Consumer Depot, LLC, Martin Randolph Fike, Carol Fike, Michael Hinds and Auction Logistix, LLC, (collectively "Defendants"), through counsel, and announce to the Court that they have agreed to a form of injunction as set forth below, subject to the approval of the Court. By agreeing to the entry of this Agreed Injunction, Defendants expressly waive and relinquish any right to challenge the form of the Agreed Injunction or any defense to the form of the Agreed Injunction, and the scope of the relief granted in the Agreed Injunction.

WHEREAS, this civil law enforcement proceeding was brought by the Attorney General and Reporter of the State of Tennessee on May 2, 2006, alleging that Defendants Consumer Depot, LLC ("Consumer Depot") and its owner and operator Martin Fike ("Fike")

engaged in numerous violations of the Tennessee Consumer Protection Act of 1977 (“TCPA”), Tenn. Code Ann. § 47-18-101 *et seq.*, in connection with their sale and advertising of various electronics and related goods to the public through their Nashville retail store, on eBay, and through their own internet websites; and

WHEREAS, on November 30, 2006, the State filed an Amended Complaint with leave of court which, among other things, added additional party Defendants Auction Logistix, Carol Fike and Michael Hinds; and

WHEREAS, on April 8, 2008, the State filed a Motion for Partial Summary Judgment which was granted by this Court on December 22, 2008; and

WHEREAS, on February 10, 2009, the State filed a Motion for Summary Judgment which was granted by this court on January 4, 2010; and

WHEREAS, on January 4, 2010, the Court granted summary judgment to the State and ruled that, as a matter of law, all Defendants engaged in unfair and deceptive acts and practices in connection with their sale and advertising of goods and services, in whole or in part, from Tennessee; and

WHEREAS, on January 4, 2010, the Court entered its Memorandum Upon Plaintiff, State of Tennessee’s Motion for Summary Judgment, and made findings of fact and conclusions of law therein, supporting the issuance of an injunction; and

WHEREAS, on February 4, 2010, the Court has ordered the State to submit a proposed form of injunction in connection with its grant of summary judgment; and

WHEREAS, on January 22 2010, after Defendants retained new counsel, such new counsel has entered his appearance in this case; and

WHEREAS, the parties have conferred through counsel about entering into an agreed injunction and have since agreed on such proposed form of injunction.

NOW THEREFORE, having agreed to the terms of the permanent injunctive relief to be ordered in this matter, and having submitted the same for approval and entry by this Court,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The jurisdiction of this Court is proper pursuant to the provisions of Tenn. Code Ann. § 47-18-108.
2. Venue is proper in Davidson County, under Tenn. Code Ann. § 47-18-108(a)(3), because it is the county where the majority of the unfair and deceptive acts and practices took place, and where Defendants engage in, or have engaged in, trade or commerce. Davidson County is also the county where all Defendants reside.
3. Because the present matter is proceeding pursuant to the State's Amended Complaint with leave of court, served and noticed to all parties, the ten (10) day notice of proceedings under Tenn. Code Ann. § 47-18-108(a)(2) has been provided.
4. The activities of the Defendants are in or affecting trade or commerce within the meaning of Tenn. Code Ann. § 47-18-104.
5. The Amended Complaint states a claim upon which relief may be granted against Defendants.
6. This Agreed Injunction is, in addition to and not in lieu of, any other civil or criminal remedies that may be provided by law and shall be issued without cost bond pursuant to Tenn. Code Ann. § 47-18-108(a)(4).
7. Entry of this Agreed Injunction is in the public interest.

FINDINGS

8. Plaintiff is the State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, and has the authority to enforce the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, through a civil law enforcement proceeding.

9. Defendant Consumer Depot, LLC (“Consumer Depot”) is a Tennessee limited liability company with its principal place of business at 3332 Powell Avenue, Nashville, Tennessee. Consumer Depot sells various goods and services to the public from a retail facility located at 3332 Powell Avenue, through Consumer Depot’s website and through third-party internet auction websites such as eBay. Consumer Depot has operated under a number of different eBay user IDs and names including BARGAINDEPOT04, UBID-IT, YOUNBID2003, RETURNDEALZ, TECHGRAVEYARD, SURPLUSDEALZ05, SWDISCOUNTERS, FACTORYDEALZ, MR-APPLIANCE, MUSIC-N-DVDS and UBID-TN-01, and has also referred to itself as Bargain Depot, Factory Dealz, Return Dealz and Surplus Dealz.

10. Defendant Auction Logistix, LLC (“Auction Logistix”) is a Tennessee limited liability company with a principal place of business at 3332 Powell Avenue, Nashville, Tennessee. At all times relevant hereto, Auction Logistix has served as Consumer Depot’s agent, has processed Consumer Depot’s customer payments and has actively participated in Consumer Depot’s day-to-day activities, including the conduct at issue in this case.

11. Defendant Martin Randolph Fike (“Fike”) is a Tennessee resident and a shareholder, officer, employee and manager of Defendant Consumer Depot, LLC and Auction Logistix, LLC. At all times relevant hereto, Defendant Fike has controlled,

managed and been actively involved in Consumer Depot's day-to-day activities, including all conduct at issue in this case. Defendant Fike has served as the managing member of Consumer Depot since its inception.

12. Defendant Fike created Auction Logistix on June 2, 2004. Auction Logistix is owned and operated by Fike, who also controls and has the authority to control the acts and practices of Auction Logistix. At all times relevant hereto, Fike has controlled, managed and been actively involved in Auction Logistix' day-to-day activities, including all conduct at issue in this case. Defendant Fike has served as the managing member of Auction Logistix since its inception.

13. Defendant Carol Fike is a Tennessee resident and a shareholder, officer, employee and manager of Defendant Consumer Depot, and is married to Defendant Fike. Carol Fike also controls and manages Consumer Depot and actively participates in its day-to-day activities, including all conduct at issue in this case.

14. Defendant Michael Hinds ("Hinds") is a Tennessee resident and an employee and agent of Consumer Depot. At all times relevant hereto, Hinds has personally and actively participated in Consumer Depot's day-to-day activities, including the conduct at issue in this case.

15. The Tennessee Division of Consumer Affairs ("DCA") is a government agency charged with receiving complaints from the public regarding unfair or deceptive business practices. Numerous consumers have complained to the DCA that Consumer Depot has engaged in unfair and deceptive acts and practices, including false and deceptive advertising.

16. The parties agree that this Court's Memorandum Upon Plaintiff, State of Tennessee's Motion for Summary Judgment, as entered on January 4, 2010, including the findings of fact and conclusions of law therein, are hereby fully incorporated by reference, for purposes of this Agreed Injunction. By entering into this Agreed Injunction, Defendants do not, however, admit any liability in this matter. Defendants reserve the right to challenge the Court's findings and conclusions, including the Court's determination that an injunction is warranted. Accordingly, this Agreed Injunction shall not be deemed an admission by any Defendant as to any issue of fact or law.

DEFINITIONS

17. For the purpose of this Agreed Injunction, the following definitions shall apply:

- (A) **"Advertising"** or **"advertisement"** shall mean any written or verbal statement, illustration or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program length commercial ("infomercial"), Internet or in any other medium.
- (B) **"And"** and **"or"** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.
- (C) **"Asset"** or **"assets"** shall mean any legal or equitable interest in, right to, or claim to, any real and personal property— including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

- (D) **“Assisting”** shall mean providing any of the following goods or services to any person: (i) performing customer service functions, including receiving or responding to customer complaints; (ii) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (iii) providing names of, or assisting in the generation of, potential customers; (iv) performing marketing services of any kind; or (v) acting as an officer or director of a business entity.
- (E) **“Clear and conspicuous”** or **“clearly and conspicuously”** shall mean that a statement is “clear and conspicuous” or “clearly and conspicuously” disclosed if, by whatever medium, it is readily understandable and presented in such size, color, contrast, location, and audibility, compared to other information with which it is presented, that is readily apparent to the person to whom it is disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner which is readily noticeable and understandable. Further, a disclosure of information is not clear and conspicuous if, among other things, it is obscured by the background against which it appears or there are other distracting elements. Warnings, safety disclosures or statements of limitation must be set out in close conjunction with the benefits described, or with appropriate captions, of such prominence that warnings, disclosures or statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading or contrary. The statement shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the statement shall be used in any communication.
- (F) **“Consumer”** or **“customer”** shall mean any natural person who seeks or may seek, or acquires by purchase, rent, lease, assignment, award by chance, or other disposition, any goods, services, or property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated.
- (G) **“Days”** shall mean calendar days.
- (H) **“Defendants”** shall mean all Defendants Consumer Depot, LLC, Martin Randolph Fike, Carol Fike, Michael Hinds, and Auction Logistix, LLC, their successors and assigns, officers, directors, owners, operators, agents, employees, affiliates, subsidiaries, and those persons or entities in active concert or participation with them by whatever names each might be known, individually and as officers, managers, employees and/or representatives, agents of the Defendant(s).

- (I) **“Document”** shall be synonymous in meaning and equal in scope to the usage of the term in Tenn. R. Civ. P. 34, and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained, extracted and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document.
- (J) **“FTC”** shall mean the Federal Trade Commission.
- (K) **“Goods”** shall mean any tangible chattels, leased, bought, or otherwise obtained for use by an individual primarily for personal, family, or household purposes.
- (L) **“Including”** shall mean including, without limitation.
- (M) **“Knowingly”** or **“knowing”** shall mean actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a reasonable person would have known or would have had reason to know of the falsity or deception.
- (N) **“Material”** shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
- (O) **“Person”** shall mean a natural person, individual, government agency, partnership, corporation, trust, estate, trust, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- (P) **“Record”** shall mean any document, as document is defined in definition paragraph H above, relating to the business, trade or commerce or business practices of Defendants.
- (Q) **“Services”** shall mean any work, labor, or services including services furnished in connection with the sale or repair of goods or real property or improvements thereto.
- (R) **“Trade,” “commerce,”** or **“consumer transaction”** shall mean the advertising, offering for sale, lease or rental, or distribution of any goods, services, or property, tangible or intangible, real, personal, or mixed, and other articles, commodities, or things of value wherever situated.

PERMANENT AGREED INJUNCTION

A. Prohibition Against Deceptive and Misleading Advertising

18. IT IS FURTHER ORDERED, that pursuant to Tenn. Code Ann. §§ 47-18-104(a), (b) and 47-18-108(a)(4), in connection with the advertising, promotion, offering for sale, or sale, lease or rental of any goods or services, all Defendants are hereby permanently restrained and enjoined from making, or assisting in the making, in whole or in part, in the State of Tennessee, any advertisement, statement or representation of material fact that is fraudulent, false, unfair, deceptive, misleading or confusing, or tends to mislead or confuse, whether directly or by implication, orally or in writing, including the following:

- (A) Advertising any good or service for sale through the use of conflicting, confusing, deceptive or misleading terms, conditions or disclaimers, in violation of Tenn. Code Ann. § 47-18-104(a) and (b)(27);
- (B) Advertising that a particular good or service is offered for sale, but delivering or attempting to deliver a different good or service, in violation of Tenn. Code Ann. § 47-18-104(a) and (b)(27);
- (C) Advertising that new goods or services are being offered for sale, but delivering goods or services that are refurbished, used, customer returns, demonstrators, damaged, or otherwise in any way not “new,” in violation of Tenn. Code Ann. § 47-18-104(a), (b)(6) and (b)(27);
- (D) Advertising that goods or services have been “checked,” “tested,” “inspected,” or otherwise examined, but delivering goods or services that are otherwise not in conformity with goods that were checked, tested, examined or inspected, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(2), (b)(5), (b)(7), (b)(21) and (b)(27);
- (E) Advertising that goods or services are functional, but delivering goods or services that Defendants knew, or should have known were defective or not useable for the intended purpose, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(2), (b)(3), (b)(5), (b)(7), (b)(9), (b)(21) and (b)(27);
- (F) Advertising that goods are in good cosmetic shape or otherwise appear in a particular condition, but delivering goods that are not in good cosmetic shape,

or in the particular condition advertised or represented, or that Defendants knew or should have known were not as advertised, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(7), (b)(21) and (b)(27);

- (G) Advertising that goods “work,” but delivering goods that do not work or do not function properly, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(7), (b)(21) and (b)(27);
- (H) Advertising that certain components, parts or hardware are included with goods or services, but delivering goods or services without the advertised components, parts or hardware, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(7), (b)(21) and (b)(27);
- (I) Advertising that goods are sold with, or, covered by, guarantees, warranties, service contracts, or similar forms of protection, when, in fact, they are not, or are sold with, or, covered by, a lesser or more limited form of such guarantees, warranties, service contracts, or similar forms of protection, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(12), (b)(19) and (b)(27);
- (J) Advertising or offering goods or services for sale without clearly and conspicuously disclosing that such goods or services were previously owned, opened, used, or registered to someone else, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(7), (b)(12), (b)(21) and (b)(27);
- (K) Advertising that a particular cost, or no cost, is being charged for shipping, handling or other incidental charges, but charging a different amount, in violation of Tenn. Code Ann. § 47-18-104(a) and (b)(27);
- (L) Advertising terms and conditions of sale which are illegal, contrary to law, unfair or deceptive or unconscionable, or otherwise represent that the transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(12), (b)(27) and § 47-18-113;
- (M) Advertising or otherwise posting terms or conditions of sale which are presented in a manner which deters refund or return requests, or legitimate consumer complaints, in violation of Tenn. Code Ann. § 47-18-104(b)(27), provided that nothing in this part shall prevent Defendants from taking steps to deter fraudulent returns;
- (N) Advertising that goods may be returned, but obstructing and evading returns, in violation of Tenn. Code Ann. § 47-18-104(b)(12) and (b)(27), provided that nothing in this provision shall prevent Defendants from taking steps to obstruct fraudulent returns;

- (O) Otherwise failing to clearly and conspicuously disclose all material terms and conditions related to a sale or offer for sale, or engaging in any other act or practice which is deceptive to the consumer or to any other person, in violation of Tenn. Code Ann. § 47-18-104(a) and (b)(27);
- (P) Failing to maintain sufficient personnel to insure quality control in the inspection and shipment of goods or services to consumers, so as to prevent the delivery of goods or services in a condition other than as advertised; and
- (Q) Representing or implying that any procedures or other acts or practices hereafter used or engaged in by any of the Defendants have been approved or endorsed, in whole or in part, by the State of Tennessee, the Division of Consumer Affairs, any governmental unit of the State of Tennessee and/or the Tennessee Attorney General or its employees.

B. Prohibition Against Unfair or Deceptive Customer Practices

19. IT IS FURTHER ORDERED, that pursuant to Tenn. Code Ann. §§ 47-18-104(a), (b) and 47-18-113(b), in connection with the advertising, promotion, offering for sale, or sale, lease or rental of any goods, services, or property, tangible or intangible, real, personal, or mixed, and other articles, commodities, or things of value wherever situated, all Defendants are hereby permanently restrained and enjoined from engaging in any unfair or deceptive business acts or practices involving customer service, returns of goods or refunds, in whole or in part in the State of Tennessee, which is unfair or deceptive under the TCPA, including, but not limited to the following:

- (A) Failing to promptly respond to consumer inquiries, concerns or complaints, irrespective of whether such inquiries or complaints are presented verbally or in writing by U.S. mail, electronic mail, or otherwise, and irrespective of whether such inquiries are presented before, during, or after a purchase has been made;
- (B) Failing to provide adequate customer service staff, telephone receptionists or similar personnel for the purpose of promptly and individually responding to any consumer concerns, inquiries or complaints, irrespective of whether such inquiries or complaints are presented verbally or in writing by the consumer;

- (C) Failing to timely issue refunds or credits within no more than fourteen (14) days as promised or represented, or fourteen (14) days from the date when it could have first been reasonably determined that a refund was due, or as may otherwise be owing and due to a consumer by operation of contract, law, court order or otherwise;
- (D) Failing to provide full or complete refunds including reimbursement of all costs paid for shipping, handling, taxes and other incidental charges and return shipping costs to consumers or other persons, for any goods or services delivered to a consumer which are not as advertised or promoted, or were otherwise sold in violation of this Agreed Injunction;
- (E) Failing to issue full and complete refunds or credits as may otherwise be owing and due to a consumer by operation of contract, law, court order or otherwise;
- (F) Failing to reimburse all return costs incurred by any consumer who attempts to obtain a refund in any instance where such refund is due because the goods or services involved were not as represented, or the conduct of one or more Defendants was not in conformity with this Agreed Injunction;
- (G) Refusing to issue a refund on the grounds that a designated refund or return period of time has expired, in any instance where such refund is being sought because the goods or services involved were not as represented, or the conduct of one or more Defendants was not in conformity with this Agreed Injunction;
- (H) Refusing to issue a refund on the grounds that a consumer's paperwork, transaction information or similar data was not provided by the consumer, in instances where Defendants have sufficient information on hand to independently establish the consumer's purchase or transaction or attempted purchase or transaction;
- (I) Retaliating against any complaining consumer, or consumer attempting to obtain a refund or make a return, in any manner, including, but not limited to, publicly posting any derogatory or negative information about such consumer, except in instances where a consumer has engaged in criminal conduct or activity; and
- (J) Failing to clearly and conspicuously disclose any fact, information, term or condition which may be material to a consumer's decision to purchase or use any good or service.

C. Removal of Negative Feedback

20. IT IS FURTHER ORDERED that Defendants shall, within no more than ten (10) days from the date of the entry of this Agreed Injunction, immediately notify eBay, Inc. that this Court has ruled that Defendants' practice to date of automatically posting negative feedback against any consumer that posted negative feedback against any Defendant on eBay has been deemed retaliatory, unlawful and in violation of the TCPA, and that Defendants are to take all such steps as may be required by eBay to ensure the prompt and permanent removal of each and every such instance of negative feedback as may have been posted against any consumer by any Defendant since January 1, 2002.

21. IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from engaging in any conduct involving the public or private posting of negative feedback or any other form of derogatory information against any consumer who (1) posted negative feedback against any Defendant; (2) requested a refund or return from any Defendant; (3) brought, filed or otherwise caused a complaint to be made against one or more Defendants; or (4) otherwise expressed any form of dissatisfaction in connection with any business act or practice engaged in by any Defendant in whole or in part in the State of Tennessee.

22. IT IS FURTHER ORDERED that to the extent Defendants have posted any form of negative feedback or other public or private derogatory information against any consumer since January 1, 2002, Defendants shall, within thirty (30) days from the date of the entry of this Agreed Injunction, cause all such negative feedback or other private or public derogatory information to be permanently removed or deleted from any record where such information may appear.

D. Record Keeping Requirements

23. IT IS FURTHER ORDERED that pursuant to Tenn. Code Ann. § 47-18-108(a)(4), and for a period of not less than five (5) years from the date of entry of this Agreed Injunction, Defendants are hereby restrained and enjoined from failing to create and retain the following records within a secure location in the State of Tennessee identified in writing and available to the Attorney General for inspection, copying and review:

- (A) Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- (B) Personnel records accurately reflecting: the name, business and residential address, and business and residential telephone number of each person employed in any capacity by any Defendant, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable and amount of their compensation;
- (C) Consumer and/or customer files including names, addresses, telephone numbers, amounts paid, quantity of goods or services purchased, and description of goods or services purchased, contracts, consumer correspondence, refund or credit data, including the date of a request for a refund and the date and amount of any refund or credit paid to the consumer, allotment records and all other information actually obtained in the ordinary course of business;
- (D) Complaints and refund requests relating to any consumers (whether received directly, indirectly or through any third party), including all documents and records pertaining to complaints, refund requests, and conversations with consumers;
- (E) A written acknowledgement by each person employed in any capacity by any Defendant that notwithstanding any provisions or agreements made by such person with one or more Defendants, including non-compete agreements, confidentiality agreements or other agreements relating in any way to their employment, each person should agree to fully and completely cooperate with any law enforcement authority, and cannot be compelled to disclose the fact that such cooperation has taken place, absent a valid judicial or administrative order compelling them to do so; and

- (F) All records and documents necessary to demonstrate full compliance with each provision of this Agreed Injunction.

24. IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from selling, marketing, distributing or otherwise disseminating any consumer data, including names, addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained since January 1, 2002, through the date of the entry of this Agreed Injunction, other than to law enforcement or pursuant to state or federal law, or as may otherwise be required in the ordinary course of business.

E. Spending Limitations

25. IT IS FURTHER ORDERED that until sixty (60) days after entry of a final judgment order in this case or as otherwise expressly extended or modified by order of this Court, Defendants are hereby restrained and enjoined from selling, transferring, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, except:

- (A) In the usual and ordinary course of business, consistent with prior similar transactions conducted within the last five year period;
- (B) For ordinary living expenses; and
- (C) For attorneys' fees.

F. Prohibition against Dissipation or Encumbering of Assets

26. IT IS FURTHER ORDERED that in order to preserve funds for consumer restitution and/or disgorgement of ill-gotten gains and in direct advancement of the State's police and regulatory power, civil law enforcement authority, and the purposes of the

Tennessee Consumer Protection Act identified at Tenn. Code Ann. § 47-18-102, including allowing the State to provide for the protection of consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices, the advancement of ethical standards of dealing between persons engaged in business, and the maintenance of the integrity of the marketplace in Tennessee as a whole, until sixty (60) days after entry of a final judgment order in this case or unless otherwise expressly extended or modified by order of this Court, Defendants, their officers, directors, agents, successors and assigns, and any other persons in active concert or participation with the above-named Defendants who receive actual notice of this Order, are hereby restrained and enjoined from liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, except as provided herein.

27. IT IS FURTHER ORDERED that until sixty (60) days after entry of a final judgment order in this case or as otherwise expressly extended or modified by order of this Court, Defendants and all other persons or entities in active concert or participation with them who receive actual notice of this Agreed Injunction by personal service or otherwise, are hereby restrained and enjoined from opening or causing to be opened any safe deposit boxed titled in the name of any Defendant, or subject to access, directly or indirectly, by any Defendant.

28. IT IS FURTHER ORDERED that the funds, property and assets affected by this section shall include both existing assets and assets acquired after the effective date of

this Agreed Injunction, including without limitation, those acquired by loan or gift.

G. Deposit of Funds in Court Account

29. IT IS FURTHER ORDERED that Defendants shall be prohibited from liquidating, encumbering, borrowing against, withdrawing, transferring to another company or person or otherwise dissipating the sum of Two Hundred Thousand Dollars (\$200,000.00) and that this sum shall be deposited in a registry account under the care, custody, and control of the Clerk of the Circuit Court of Davidson County by no later than the close of business on May 14, 2010. This sum shall be held *in custodia legis* by the Clerk as described below. The account will be listed as "Monies Held For Potential Consumer Restitution and Other Monetary Relief Pursuant to Agreed Injunction in the *Case of State of Tennessee v. Consumer Depot, LLC, et al.*" The monies shall be placed in a registry account that will bear the highest interest rate. The monies shall be held in a registry account of this Court until an Order by this Court expressly stating otherwise.

30. Pursuant to Tenn. Code Ann. § 47-18-108(a)(4) the injunction is issued without cost bond from the State. Pursuant to Tenn. Code Ann. § 47-18-116 no costs shall be taxed or assessed to the State under this injunction.

H. Monitoring Compliance of Personnel

31. IT IS FURTHER ORDERED that pursuant to Tenn. Code Ann. § 47-18-108(a), Defendants are hereby permanently restrained and enjoined from:

- (A) Failing to take reasonable steps sufficient to monitor and ensure that all employees, representatives, and independent contractors engaged in sales or other consumer/customer service functions comply with this Agreed Injunction. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:

1. Listening to the oral representations made by persons engaged in sales or other customer service functions;
 2. Establishment and maintenance of review and oversight procedures of all advertisements prior to their dissemination to the public for compliance with this Agreed Injunction;
 3. Establishing a procedure for receiving and responding to consumer complaints;
 4. Establishment and maintenance of personnel training regarding obligations to comply with this Agreed Injunction; and
 5. Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;
- (B) Failing promptly to investigate fully all consumer concerns, requests and complaints received by any business to which this Agreed Injunction applies; and
- (C) Failing to take corrective action with respect to any employee, representative, independent contractor or other agent who is not complying with this Agreed Injunction, which may include disciplining and/or terminating such person or entity.

I. Distribution of Agreed Injunction

32. IT IS FURTHER ORDERED that for a period of at least five (5) years from the date of entry of this Agreed Injunction, Defendants shall deliver copies of this Agreed Injunction as directed below:

- (A) Defendants must deliver copies of this Agreed Injunction and the TCPA to all of its employees and agents who engage in conduct related to the subject matter of the Agreed Injunction. For current personnel, delivery shall be within ten (10) days of service of this Agreed Injunction upon Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities; and
- (B) Defendants must secure a signed and dated statement acknowledging receipt of this Agreed Injunction and the TCPA within thirty (30) days of delivery, from all persons receiving copies of the Agreed Injunction and the TCPA pursuant to this Section. Copies of such signed and dated statements shall be kept as part of each employees personnel records and shall be provided to the State within twenty (20) days from the date such statement is signed by such employees and agents.

RETENTION OF JURISDICTION

33. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of concluding the ancillary relief portions of this proceeding, including restitution, disgorgement of profits, license revocation, attorneys' fees and costs, and to issue any other expenditure approvals, orders and directions as may be requested by the State or may be necessary or appropriate from time to time for the construction, modification or execution of this Agreed Injunction, including the enforcement of compliance therewith and penalties, remedies and sanctions for violation thereof. Defendants agree to pay all court costs and attorneys' fees associated with any successful petitions to enforce any provision of this Agreed Injunction against Defendants.

COMPLIANCE REPORTING BY DEFENDANTS

34. IT IS FURTHER ORDERED that in order that compliance with the provisions of this Agreed Injunction may be monitored:

- (A) For a period of five (5) years from the date of entry of this Agreed Injunction, Defendants shall notify the Attorney General of any changes in corporate structure of any of the Defendants including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Agreed Injunction; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, provided that, with respect to any proposed change about which any Defendant learns less than thirty (30) days prior to the date such action is to take place, each Defendant shall notify the Attorney General as soon as is practicable after obtaining such knowledge;
- (B) One hundred eighty (180) days after the date of entry of this Agreed Injunction, each Defendant shall provide a written report to the Attorney General, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Agreed

Injunction. This report shall include, but not be limited to:

1. The then-current residence address, mailing addresses, and telephone numbers of each Defendant; and
 2. Any other changes required to be reported under subparagraph A of this part;
- (C) For the purposes of this Agreed Injunction, Defendants shall, unless otherwise directed by the Attorney General's authorized representatives, mail all written notifications to the Attorney General in care of undersigned counsel for the State. Upon entry of a final order in this matter, then all written notifications to the Attorney General under this Agreed Injunction shall be directed to:

DEPUTY ATTORNEY GENERAL
Office of the Tennessee Attorney General
c/o Consumer Advocate & Protection Division
Post Office Box 20207
Nashville, Tennessee 37202-0207; and

- (D) During the pendency of the instant proceedings, any notices required to be sent to the State or to Defendants under this Agreed Injunction shall be sent in conformance with the Tennessee Rules of Civil procedure. Upon entry of a final judgment, all such notices shall be sent by United States certified mail, postage prepaid, return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document.

COOPERATION WITH THE ATTORNEY GENERAL

35. IT IS FURTHER ORDERED that Defendants shall, in connection with this action or any subsequent investigation related to or associated with the transactions or the occurrences that are the subject of the State Amended Complaint or an alleged violation of this Agreed Injunction, cooperate in good faith and in a timely fashion with the State and appear, or cause its officers, employees, representatives or agents to appear, at such places and times as the State shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be

reasonably required by the State.

36. IT IS FURTHER ORDERED that if requested in writing by the State, Defendants shall appear, or cause its officers, directors, owners, operators, employees, representatives or agents to appear, and provide truthful testimony in any trial, deposition or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint or an alleged violation of this Agreed Injunction, without the service of a subpoena.

INDEPENDENCE OF OBLIGATIONS

37. IT IS FURTHER ORDERED that the provisions of this Agreed Injunction are separate and severable from one another. If any provision expires, is stayed or is determined to be invalid, the remaining provisions shall remain in full force and effect.

APPLICATION OF AGREED INJUNCTION TO DEFENDANTS AND THEIR SUCCESSORS

38. IT IS FURTHER ORDERED that the duties, responsibilities, burdens and obligations set forth in connection this Agreed Injunction shall apply to each Defendant.

39. IT IS FURTHER ORDERED that Defendants shall not participate directly or indirectly in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices prohibited in this Agreed Injunction or for any purpose which would otherwise circumvent any part of this Agreed Injunction or the spirit or purposes of this Agreed Injunction.

PENALTIES FOR FAILURE TO COMPLY

40. IT IS FURTHER ORDERED that pursuant to Tenn. Code Ann. § 47-18-108(c), any knowing violation of the terms of this Agreed Injunction shall be subject to an

assessment of civil penalties of not more than Two Thousand Dollars (\$2,000.00) recoverable by the State for each violation, in addition to any other penalties, remedies, fines or sanctions provided by law including contempt sanctions and the imposition of attorneys' fees and costs.

GENERAL PROVISIONS

41. As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

42. Nothing in this Agreed Injunction shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Agreed Injunction shall not bar the State, or any other governmental entity from enforcing laws, regulations or rules against the Defendants.

43. No waiver, modification, or amendment of the terms of this Agreed Injunction shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Court and then only to the extent specifically set forth in such written waiver, modification or amendment.

44. Defendants waive any and all challenges in law or equity to the entry of this Agreed Injunction by the courts. Defendants further waive any right to appeal, petition for *certiorari*, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings under this Agreed Injunction.

45. Any failure by any party to this Agreed Injunction to insist upon the strict performance by any other party of any of the provisions of this Agreed Injunction shall not

be deemed a waiver of any of the provisions of this Agreed Injunction, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreed Injunction and the imposition of any applicable penalties, sanctions, remedies, including but not limited to contempt, civil penalties as set forth in Tenn. Code Ann. § 47-18-108(c) and/or the payment of attorneys' fees to the State and other applicable state law.

46. If any clause, provision or section of this Agreed Injunction shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Agreed Injunction and this Agreed Injunction shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

47. Time shall be of the essence with respect to each provision of this Agreed Injunction that requires action to be taken by the Defendants within a stated time period or upon a specified date.

48. Nothing in this Agreed Injunction shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

49. This Agreed Injunction sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understanding, oral or written, between the parties relating to the subject matter of this Agreed Injunction which are not fully expressed hereto or attached hereto.

50. This Agreed Injunction does not entitle any Defendant to seek or to obtain attorneys' fees as a prevailing party under any statute, regulation, or rule under state or federal law.

51. This Agreed Injunction may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Agreed Injunction may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

EFFECT OF AGREED INJUNCTION

52. IT IS FURTHER ORDERED that nothing in this Agreed Injunction shall be construed as relieving Defendants of the obligation to comply with all federal and state laws, regulations and rules, nor shall any of the provisions of this Agreed Injunction be deemed to be permission to engage in any acts or practices prohibited by such law, regulation or rule.

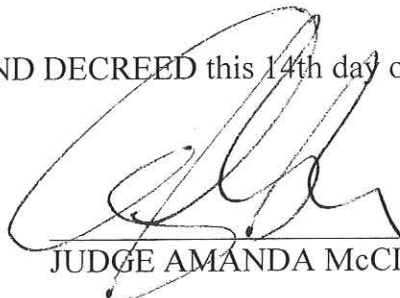
PRIVATE RIGHT OF ACTION

53. IT IS FURTHER ORDERED that nothing in this Agreed Injunction shall be construed to affect, restrict, limit or alter any private right of action that any consumer, person or entity, or any local, state, federal or governmental entity may have against any Defendant.

COURT COSTS

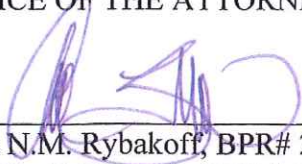
54. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that no costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Defendants shall pay all costs associated with entry of this Agreed Injunction and any related hearings and filings.

IT IS SO ORDERED, ADJUDGED AND DECREED this 14th day of May, 2010.

 5/14/2010
JUDGE AMANDA McCLENDON

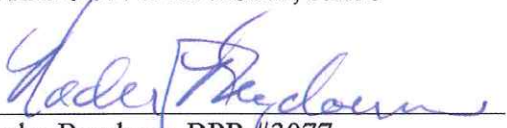
JOINTLY SUBMITTED FOR ENTRY BY:

OFFICE OF THE ATTORNEY GENERAL



Olha N.M. Rybakoff, BPR# 24254
Jennifer E. Peacock, BPR # 22227
R. Brant Harrell, BPR # 24470
Assistant Attorneys General
Consumer Advocate and Protection Division
Office of the Attorney General
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Nashville, TN 37202-0207
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olha.rybakoff@ag.tn.gov

BAYDOWN & KNIGHT, PLLC



Nader Baydown, BPR #3077
Stephen C. Knight, BPR # 15514
Suite 2650, Fifth Third Center
424 Church Street
Nashville, Tennessee 37219
(615) 256-7788

DEFENDANT CONSUMER DEPOT, LLC'S SIGNATURE AND ACKNOWLEDGMENT

Defendant Consumer Depot, LLC, and its attorneys have read and understand this Agreed Injunction and each of its terms. Defendant Consumer Depot, LLC admits to the jurisdiction of the Court in this matter and consent to the entry of this Agreed Injunction. Defendant Consumer Depot, LLC, agrees to each and every term contained herein.

I, Martin R. Fike, being first duly sworn on oath, depose and say that I am an officer of Consumer Depot, LLC, and am fully authorized and empowered to sign this Agreed Injunction on behalf of Consumer Depot, LLC, and bind the same to the terms hereof.

By: 

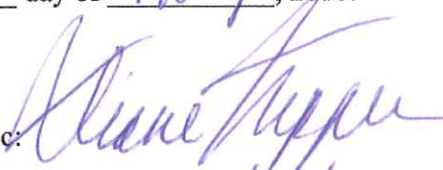
Name: Martin R. Fike

Title: President of Consumer Depot, LLC

SUBSCRIBED AND SWORN to before

me this 12th day of May, 2010.

Notary Public:



My Commission Expires:

1/09/12



DEFENDANT AUCTION LOGISTIX, LLC'S SIGNATURE AND ACKNOWLEDGMENT

Defendant Auction Logistix, LLC, and its attorneys have read and understand this Agreed Injunction and each of its terms. Defendant Auction Logistix, LLC admits to the jurisdiction of the Court in this matter and consent to the entry of this Agreed Injunction. Defendant Auction Logistix, LLC, agrees to each and every term contained herein.

I, Martin R. Fike, being first duly sworn on oath, depose and say that I am an officer of Auction Logistix, LLC, and am fully authorized and empowered to sign this Agreed Injunction on behalf of Auction Logistix, LLC, and bind the same to the terms hereof.

By: 


Name: Martin R. Fike

Title: President of Auction Logistix, LLC

SUBSCRIBED AND SWORN to before

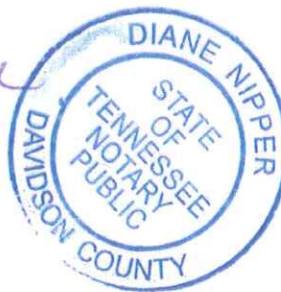
me this 12th day of May, 2010.

Notary Public:



My Commission Expires:

1/09/12



DEFENDANT MARTIN R. FIKE'S SIGNATURE AND ACKNOWLEDGMENT

Defendant Martin R. Fike and his attorneys have read and understand this Agreed Injunction and each of its terms. Defendant Martin R. Fike admits to the jurisdiction of the Court in this matter and consents to the entry of this Agreed Injunction. Defendant Martin R. Fike agrees to each and every term contained herein.

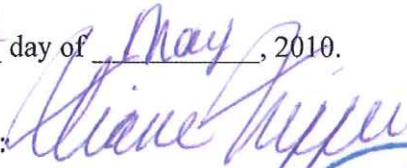
I, Martin R. Fike, being first duly sworn on oath, depose and say that I am an Individual and am fully authorized and empowered to sign this Agreed Injunction on behalf of myself, and bind the same to the terms hereof.

By: 
Name: Martin R. Fike

SUBSCRIBED AND SWORN to before

me this 12th day of May, 2010.

Notary Public:



My Commission Expires:

1/09/11



DEFENDANT CAROL FIKE'S SIGNATURE AND ACKNOWLEDGMENT

Defendant Carol Fike and her attorneys have read and understand this Agreed Injunction and each of its terms. Defendant Carol Fike admits to the jurisdiction of the Court in this matter and consents to the entry of this Agreed Injunction. Defendant Carol Fike agrees to each and every term contained herein.

I, Carol Fike, being first duly sworn on oath, depose and say that I am an Individual and am fully authorized and empowered to sign this Agreed Injunction on behalf of myself, and bind the same to the terms hereof.

By: Carol Fike
Name: Carol Fike

SUBSCRIBED AND SWORN to before

me this 12th day of May, 2010.

Notary Public: Diane Nipper


My Commission Expires: 1/09/12



DEFENDANT MICHAEL HIND'S SIGNATURE AND ACKNOWLEDGMENT

Defendant Michael Hinds and his attorneys have read and understand this Agreed Injunction and each of its terms. Defendant Michael Hinds admits to the jurisdiction of the Court in this matter and consents to the entry of this Agreed Injunction. Defendant Michael Hinds agrees to each and every term contained herein.

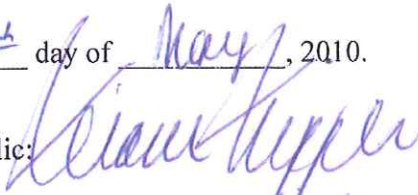
I, Michael Hinds, being first duly sworn on oath, depose and say that I am an Individual and am fully authorized and empowered to sign this Agreed Injunction on behalf of myself, and bind the same to the terms hereof.

By: 
Name: Michael Hinds

SUBSCRIBED AND SWORN to before

me this 12th day of May, 2010.

Notary Public:



My Commission Expires:

1/09/12




CERTIFICATE OF SERVICE

I, Olha N.M. Rybakoff, Assistant Attorney General, hereby certify that on

May 14, 2010 I caused a copy of the foregoing Agreed Injunction, to be
hand-delivered to Nader Baydoun, Esquire, and Stephen C. Knight, Esquire, Counsel for
Defendants, addressed as follows:

Nader Baydoun, Esquire
Stephen C. Knight, Esquire
BAYDOUN & KNIGHT, PLLC
Suite 2650, Fifth Third Center
424 Church Street
Nashville, Tennessee 37219



OLHA N.M. RYBAKOFF, BPR # 24254
Assistant Attorney General